1979

Jolene. Stahl v. Utah Transit Authority : Brief For Appellant

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

NO. 16419

JOLENE STAHL,

Plaintiff-Appellant,

vs.

UTAH TRANSIT AUTHORITY,

Defendant-Respondent.

APPEAL FROM A SUMMARY JUDGMENT
OF THE DISTRICT COURT OF SALT LAKE COUNTY
THE HONORABLE CHRISTINE M. DURHAM, JUDGE

BRIEF FOR APPELLANT

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NATURE OF THE CASE

This is a negligence action brought by the appellant against the respondent for injuries suffered in a motor vehicle collision.

DISPOSITION BELOW

This case was heard by the Honorable Christine M. Durham, who granted a summary judgment in favor of the respondent and held that Utah Code Annotated §11-20-56 barred appellant's claim.

RELIEF SOUGHT ON APPEAL

Appellant requests that the summary judgment of the district court be reversed and the case remanded to the district court for trial.

STATEMENT OF THE FACTS

On September 9, 1976, near 3100 South and 2700 West in Salt Lake City, one of the respondent's busses, driven by an employee of the respondent, negligently collided with the rear end of an automobile driven by Melissa Mounteer. The impact of this collision caused the Mounteer automobile, which was turning left, to collide head-on with the automobile driven by appellant. As a result of the impact between the Mounteer vehicle and the appellant's vehicle, Mr. Mounteer, who was seated in the right front passenger seat, was thrown through the front window and killed.

After the accident the appellant was taken to the emergency room of Valley West Hospital for examination. The appellant later returned to work, where she was called by Mr. Thomas L. Vance, the insurance adjuster of the respondent, who wanted to come to see appellant at work and get a statement from her. Had Mr. Vance not made this request, the appellant would not have stayed at work. Mr. Vance came to appellant's work on the day of the accident and had her sign a statement about the accident. He also had the appellant sign a medical information release form and asked who her doctor was.

In addition, Mr. Vance gave the appellant his card and said he would be adjusting her claim. (R. 88, Deposition of Jolene Stahl, at 25-26).

With these assurances that Mr. Vance was working on her claim, the appellant did not seek legal counsel. However, after approximately three and one-half months had passed without any action on her claim, appellant retained counsel to represent her on December 28, 1976. Appellant's attorney sent written notice of appellant's claim to the respondent and the Utah Attorney General on December 29, 1976. (R. 64). Appellant's attorney entered into negotiations with the respondent and its insurance adjuster, Mr. Vance. As late as January 14, 1977, Mr. Vance was attempting to gather medical information from appellant's doctor. (R. 63). Because of the refusal of respondent's insurance adjuster to settle her claim, appellant was forced to file a complaint in the district court on July 14, 1977.

ARGUMENT

I. UTAH CODE ANNOTATED §11-20-56 DOES NOT BAR EITHER APPELLANT'S CLAIM OR ANY OTHER CLAIMS

The critical issue in this case is whether this Court is going to read into Utah Code Annotated §11-20-56 a provision which the Utah Legislature did not include. In the case below, the district court held that this statute barred claims not brought within thirty days. Appellant contends that U.C.A. §11-20-56 does not bar appellant's claim or any other claim which is not presented to the respondent's board of directors within thirty days of an accident. In stark contrast to the provision in the Utah Governmental Immunity Act (U.C.A. §63-30-12) that a "claim against the state . . . shall be forever barred unless notice thereof is filed . . . within one year after the cause of action arises," U.C.A §11-20-56 merely states that claims against the respondent "shall be presented to the board of directors in writing within thirty days" after an accident. There is no language in the statute which bars claims brought more than thirty days after an accident.

The district court interpreted U.C.A. §11-20-56 in a way not permitted by the statute itself or by judicial

decisions. As previously mentioned, the statute does not contain any language that claims are barred if not presented within thirty days. In addition, it has been consistently held by judicial decisions that "a court must not read into a statute provisions which the legislature did not include." Alexander v. Michigan Employment Security Commission, 4 Mich. App. 378, 144 N.W.2d 850 (1966). See also City of Phoenix v. Donofrio, 99 Ariz. 130, 407 P.2d 91 (1965); Richardson v. City of San Diego, 193 Cal. App. 2d 648, 14 Cal. Rptr. 494 (Ct. App. 1961). The Supreme Court of Pennsylvania has also stated that "it is not for the courts to add, by interpretation, to a statute, a requirement which the legislature did not see fit to include." Commonwealth v. Rieck Investment Corp., 419 Pa. 52, 213 A.2d 277 (1965).

From the foregoing, it is clear that neither the district court nor any court should read language into U.C.A. §11-20-56 that is not present within the statute. If "claims barred" language were read into the statute, it would produce an anomalous result. On the one hand, claims against local and state government (which absent the Utah Governmental Immunity Act could not be brought

at all) would be barred if not brought within one year, while claims against respondent UTA would be barred if not brought within one month. From the language of U.C.A. §11-20-56 it is obvious that the Utah Legislature did not intend to give the UTA greater rights than cities or the state. It is clear from the words used that the intent of the Legislature was merely to allow the respondent to be notified of claims before any actions were brought.

Since U.C.A. §11-20-56 does not bar claims, other statutes must be consulted to determine whether appellant's claim was presented timely. Under U.C.A. §63-30-2(1), "The word 'state' shall mean the state of Utah or any office, department, agency, . . . or other instrumentality thereof." Since respondent is an agency of the state, claims against it would be barred if they were not brought within one year after the cause of action arose. U.C.A. §63-30-12. In the present case, appellant complied with this statute by filing her notice of claim with the attorney general and respondent on December 29, 1976. (R. 64). In addition, appellant filed her complaint in this case on July 14, 1977, well within the one year period.

II. ASSUMING UTAH CODE ANNOTATED §11-20-56 BARS CLAIMS, APPELLANT'S CLAIM IS NOT BARRED BECAUSE OF THE ACTIONS OF RESPONDENT'S INSURANCE ADJUSTER

This Court has held that a lay person might be so deceived by the conduct of a governmental entity's insurance adjuster, that the governmental entity will be estopped from raising the matter of not filing a complaint timely. Rice v. Granite School District, 23 Utah 2d 22, 456 P.2d 159 (1969). As was stated in Rice, "One cannot justly or equitably lull an adversary into a false sense of security thereby subjecting his claim to the bar of limitations, and then be heard to plead that very delay as a defense to the action when brought."

If this Court finds as a matter of law that U.C.A. §11-20-56 bars claims not brought within one month, it must also decide whether the evidence before the district court raised an issue of material fact as to whether the conduct of respondent's adjuster was such as to induce appellant to delay the filing of her claim. The evidence before the district court in the form of appellant's deposition did raise an issue of material fact on this matter.

Appellant testified in her deposition that respondent's insurance adjuster, Mr. Vance, went to see her on

the day of the accident. At that time, he took appellant's statement and secured medical information release forms. In addition, he gave appellant his card and told her that he would be adjusting her claim on behalf of the respondent. Mr. Vance did not inform appellant that she would have to contact anyone else representing the respondent other than himself and did not tell her to seek an attorney. He continued to attempt to obtain medical information from appellant's doctor until as late as January 14, 1977. Assuming appellant had asked Mr. Vance whether she should contact the respondent, Mr. Vance would have told her that she did not have to because he handled all the respondent's claims. (R. 87, Deposition of Thomas L. Vance, at 12).

In light of the fact that appellant did not seek an attorney for the first three and one-half months after the accident because of the conduct of respondent's insurance adjuster, it is difficult to accept respondent's "soiled hands" argument that appellant's claim is barred because it was not brought to the board of directors within one month of the accident. At the very least, the conduct of respondent's insurance adjuster

raises a genuine issue of material fact that should be determined by the district court.[1]

III. ASSUMING U.C.A §11-20-56 BARS CLAIMS, APPELLANT'S CLAIM IS NOT BARRED BECAUSE RESPONDENT RECEIVED NOTICE OF APPELLANT'S CLAIM WITHIN 30 DAYS OF THE ACCIDENT

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1. Appellant also contends that in addition to a waiver of the claim provision based upon the conduct of respondent's insurance adjuster, respondent waived its immunity by taking out insurance for this type of case. Justice Crockett has noted that in relation to the Utah Governmental Immunity Act, it is the "manifest clear intent that where there is an insurance carrier it should not avail itself of protections which belong to the soverign entity." Rice v. Granite School District, 23 Utah 2d 22, 456 P.2d 159 (1969) (Crockett, J., concurring). See also Thomas v. Broadlands Community Consol. School Dist., 348 Ill. App. 567, 109 N.E.2d 636 (1952) (immunity waived by school district to extent of its insurance); Van Alstyne, Governmental Tort Liability: A Decade of Change, 1966 U. Ill. L.F. 919, 967; Note, The Utah Governmental Immunity Act: An Analysis, 1967 Utah L. Rev. 120, 147-48.

The thrust of respondent's Motion for Summary Judgment was that appellant was barred from bringing the present action because she failed to file a written claim with respondent's board of directors within thirty days of the accident as allegedly required by U.C.A. §11-20-56. However, the undisputed facts are that the respondent received notice of appellant's claim as contemplated by U.C.A. §11-20-56 and that there was no way under the circumstances that appellant could have given better notice to respondent.

On September 9, 1976 (the date of the accident), respondent received notice of appellant's claim and dispatched its insurance adjuster, Thomas L. Vance, to obtain a written statement by appellant of her version of the accident. (R. 87, Deposition of Thomas L. Vance, at 5). Mr. Vance obtained this written statement on the day of the accident and since that time, respondent was aware of appellant's claim and had opportunity to investigate it. Mr. Vance testified in his deposition that he did not tell the appellant to present her claim to the respondent because the claims of the respondent were handled directly by him.

Q (By Mr. Bennett:) Did you tell her that she should present any kind of a claim right to the Utah Transit Authority rather than through your company?

A I definitely did not.

Q Is there any reason why you did not tell her that?

A Yes. All claims, claims against the bus company, are handled directly by our office and specifically by myself. I never refer anyone to the bus company. In fact, if--well, I just don't, in any case.
(R. 87, Deposition of Thomas L. Vance, at 12).

Mr. Vance also testified that had the appellant filed a claim with the respondent directly, the respondent would merely have turned the claim over to him. (R. 87, Deposition of Thomas L. Vance, at 18). It is clear that the respondent, through its insurance adjuster, had notice of appellant's claim within thirty days of the accident. It is equally clear that had appellant filed her claim with respondent's board of directors, the board would merely have turned over the claim to its insurance adjuster, Mr. Vance. Under these circumstances, respondent's argument that appellant's claim should be barred because she did not notify respondent's board of directors is unacceptable.

CONCLUSION

Utah Code Annotated §11-20-56 does not contain any language that bars appellant's claim. There was no way for appellant reading this statute to know that unless she filed her claim within thirty days, she would be barred from recovery. Even if this Court were to read language into the statute barring appellant's claim, the conduct of respondent's insurance adjuster presents a genuine issue of material fact that should be determined by the district court.

For the reasons stated herein, the summary judgment of the district court should be reversed and the case remanded to the district court for trial.

Respectfully submitted,

Wendell E. Bennett

WENDELL E. BENNETT
Attorney for Appellant

DELIVERY CERTIFICATE

I certify that I delivered eleven copies of the Brief for Appellant to the clerk of the Supreme Court, on the 14th day of June, 1979, and I delivered two copies to Rex J. Hanson, 702 Kearns Building, Salt Lake City, Utah 84101.

Kelly Richards